

Notice of Allowability

Application No.

10/013,036

Applicant(s)

HILLMAN, JEFFREY DANIEL

Examiner

Stephen Gucker

Art Unit

1647

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 2/7/05.
2. ☒ The allowed claim(s) is/are 1,2,5-8,10-12,14-15,17-23,25, renumbered as 1-19, respectively.
3. ☒ The drawings filed on 30 October 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 2/25/02
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment SAME PAPER
8. ☒ Examiner's Statement of Reasons for Allowance J
9. ☐ Other _____

EXAMINER'S AMENDMENT & REASONS FOR ALLOWANCE

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Lisa Hillman on 4/27/05.

An examiner's amendment to the record appears below.

In the specification:

Page 1, line 9, inserted after "1999," :

--now U.S. Patent No. 6,391,285 B1,--.

In the claims:

Canceled claims 3-4 and 26-36.

In claim 5, line 2, inserted before "conservative":

--single--.

In claim 5, line 2, inserted after "occurs":

--either--.

In claim 5, line 3, deleted "13, or combinations thereof." and inserted in its place:

--13, or 19.--.

2. The following is an examiner's statement of reasons for allowance: : the affidavit filed 2/7/05 under 37 CFR 1.131 is persuasive in establishing that Jeffery D. Hillman is the sole inventor of the instant Application. In addition, the closest prior art of record is Lavoie et al. (US 6,218,362), wherein a sequence is disclosed that is similar to the instant SEQ ID NO:6, except Lavoie et al. teaches a sequence which has 3 different amino acids at amino acid positions 6, 13, and 19 of the instant SEQ ID NO:6 (see Lavoie et al., claim 3). The instant claims are allowable over Lavoie et al. because there is no suggestion or motivation to make the instant claimed sequences which are limited to either a single conservative amino acid substitution (instant claim 5, renumbered as claim 3) at one of the recited amino acid positions, or a specified double amino acid substitution (instant claim 10, renumbered as claim 7) at the recited positions (6 and 13), as opposed to Lavoie et al., which has 3 amino acid substitutions as stated above.

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In other words, there is no suggestion or motivation in the prior art of record to make a variant of instant SEQ ID NO:6 with less than 3 amino acid substitutions. *In re Dembiczak*, 50 USPQ2d 1614.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

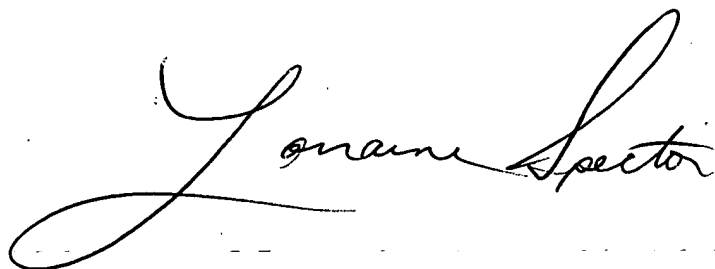
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technical Center 1600 general number which is (571) 272-1600.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gucker whose telephone number is (571) 272-0883. The examiner can normally be reached on Monday to Friday from 0930 to 1800. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached at (571) 272-0961. The fax phone number for this Group is currently (571)-273-8300.

SG

Stephen Gucker

April 28, 2005

A handwritten signature in cursive script that reads "Lorraine Spector". The signature is written in black ink and is positioned above a printed nameplate.

LORRAINE SPECTOR
PRIMARY EXAMINER